

**REMARKS/ARGUMENTS**

Claims 1-12 are in the instant application. Claims 1-8 have been rejected. Claims 9-11 are allowed. Claim 12 has been withdrawn from consideration due to a restriction requirement.

**Restriction Requirement**

The Examiner has required restriction to claims 1-11 or claim 12. Applicant has provisionally elected claims 1-11 and traversed the restriction requirement. Applicant affirms the elections with traverse. In requiring the restriction, the Examiner states that claim 12, a method claim, can be practiced by another materially different apparatus such as one that does not have certain elements from claims 1, 9 and 10, namely:

claim 1: means for gripping

claim 9: a secondary grip detachable from the primary grip

claim 10: detents

Claim 1 recites a “means for gripping said applicator portion when separated from said gripping portion.” Claim 12 recites “attaching a secondary gripping element to the applicator pad.” As recited in claim 12, attachment of the secondary gripping element follows the step of “detach[ing] the applicator pad from the primary gripping element.” In other words, “attaching a secondary gripping element to the applicator pad” after “detach[ing] the applicator pad from the primary gripping element” provides for a “means for gripping said applicator portion when separated from said gripping portion.” Therefore, as to the above cited element

Application No.: 10/737,407

from claim 1, the process of claim 12 can not be practiced by another, materially different apparatus, since the element in claim 1 is broader than, and would read on, any apparatus used to perform the step in the corresponding element in claim 12.

The Applicant respectfully requests that the restriction requirement be withdrawn and that claim 12 be returned to consideration.

### **Claim Rejections Under § 102**

The Examiner has rejected claims 1-3 and 6 as being anticipated by Forbis (patent No. 2,261,058). Claims 2, 3 and 6 depend from independent claim 1.

In order for claim 1 to be anticipated by the disclosure of the cited reference, every element of the claim must be disclosed by the reference. Structures and steps need not be identical but must be substantially similar.

Among other elements, claim 1 recites “an elongated handle having a proximal end and a distal end.” Limitations in the claim further state that said handle is “divided by a zone of fracture into a gripping portion at said distal end and a detachable applicator portion at said proximate end.” Therefore, the claim defines a handle structure in which a gripping portion and an applicator portion are divided from one another by a zone of fracture.

Turning to the cited reference, we see a device comprising a plurality of swabs, each swab having an applicator portion and a gripping portion, the swabs being attached to one another in series at points where the gripping portion of one swab contacts the applicator portion

Application No.: 10/737,407

of the adjoining swab. From the disclosure, one with ordinary skill in the art would understand that swabs can be broken off from one another as used.

The point of contact between swabs can be described as a fracture point since the patent discloses that the swabs may be separated from one another by breaking the gripping portion of one swab away from the applicator portion of the adjoining swab. However, at no point, either through the drawings or text, does the patent describe a method or apparatus wherein the applicator portion or a swab is divided from its gripping portion by a zone of fracture. Each swab retains its gripping portion both before and after detachment from its neighboring swab.

In addition, the fracture zone disclosed in Forbis is disclosed as being within the applicator portion of the swab. Therefore, the fracture zone is at the opposite end of the applicator portion from the end proximate its gripping portion. As disclosed, the zone of fracture cannot be construed as being between the applicator portion and the gripping portion.

The disclosure of Forbis does not anticipate the limitations of claim 1, and Applicant respectfully requests that claim 1 and all depending claims be allowed.

### **Claim Rejections Under § 103**

The Examiner has rejected claims 4, 5, 7 and 8 under § 103(a) as being obvious in light of Forbis. The above noted claims all depend from and further limit claim 1 and would, therefore, be in condition for allowance if claim 1 were allowed.

**Conclusion**

In view of the amendments contained herein and the above remarks, it is respectfully submitted that claim 12 should be brought back into consideration and that claims 1 through 8 and 12 are patentable over the prior art. Accordingly, reconsideration and allowance of these claims is respectfully requested.

In the event that the Examiner is of the opinion that the prosecution of this application can be advanced thereby, he is encouraged to contact Applicant's attorney at the telephone number listed below.

Respectfully submitted,

By



Sean T. Bradley

P.O. Reg. No. 46,572

Erickson & Kleypas, L.L.C.  
800 W. 47th Street, Suite 401  
Kansas City, Missouri 64112  
Phone: (816) 753-6777

Attorneys for the Applicant

Application No.: 10/737,407



Certificate of Mailing

I hereby certify that this paper or fee is being deposited with the United States Postal Service as first class mail and is addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on September 9, 2005.

By

A handwritten signature in black ink, appearing to read "Sean T. Bradley".

Sean T. Bradley  
P.O. Reg. No. 46,572